Filed 6/26/09 Kathy V. v. Superior Court CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

KATHY V., Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; ORANGE COUNTY SOCIAL SERVICES AGENCY et al., Real Parties in Interest.	G041736 (Super. Ct. Nos. DP016349, DP016350 & DP016351) O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Barbara A. Evans, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Donna P. Chirco for Petitioner.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Real Party in Interest Orange, County Social Services Agency.

Law Office of Harold LaFlamme and Karen Cianfrani for the Minors.

* * *

Kathy V. seeks extraordinary relief from the order of the juvenile court terminating reunification services at the 12-month review hearing and referring the dependency cases of her three children to a permanent plan selection hearing (Welf. & Inst. Code, § 366.26).[1] She contends the court erred in making the order because there is insufficient evidence to support the finding that she received reasonable services and there is substantial evidence the children could be returned to her at the 18-month review hearing. She also contends the court erroneously required her to pay for a visitation monitor in order to visit with her children. We find no error and deny the petition.

FACTS

On December 5, 2007, George, Briana, and Priscella Q., ages seven, five, and four, respectively, were taken into protective custody by the Orange County Social Services Agency (SSA). Briana told her teacher that her mother had held a knife to the father's neck, and the school authorities called the police. When the police arrived at the home, they found no food or drinks, the toilet did not work and was filled with feces, the refrigerator did not work, and the floor was dirty and covered with trash. The parents have a history of domestic violence; a restraining order preventing the father from coming near the mother was put into place in November 2004 and was not due to expire until November 2008. Notwithstanding, both parents appeared to be living in the home with the children. The father said they were married, the mother said they were divorced.

[1] All statutory references are to the Welfare and Institutions Code.

Each of the three children described severe and continuous domestic violence between the parents and physical abuse to them by the father.

The children were declared dependents of the juvenile court under section 300, subdivision (b) [failure to protect], and placed with their maternal grandmother. The parents were offered reunification services, which included counseling, parenting classes, and a domestic violence program. The court ordered monitored visitation twice a week.

At the six-month review hearing, in July 2008, the parents were making substantial progress on their case plans. The social worker reported, "[B]oth parents have openly cooperated with [SSA] and with the undersigned to uphold the best interests of the children. The undersigned is impressed with the motivated and cooperative manner in which the mother . . . and the father . . . have worked together and separately with the undersigned for family reunification." The social worker recommended a 60-day trial visit with the mother to begin in September. The mother stipulated that continued supervision was necessary and she had been provided reasonable services. The court ordered additional reunification services and set a 12-month hearing for January 2009.

By late July, the maternal grandmother's home was no longer a satisfactory placement. Rather than relocating the children temporarily, SSA moved up the planned 60-day trial visit to July 29 and placed the children with the mother. Unfortunately, the mother had financial problems almost immediately and was unable to pay her rent for July and August. During that time, the father provided some child care by visiting the children on weekend nights so the mother could work as a dancer, and he paid her $300 per week in child support. But the relationship between the parents deteriorated toward the end of August, and the mother obtained a new temporary restraining order protecting herself and the children from any contact with the father.

The mother was evicted from her apartment on September 8, 2008. For the next three weeks, she and the children moved among six motels for housing. She received assistance through the CalWorks cash assistance grant, but refused to apply for

homeless assistance through CalWorks, "although she has been directed to do so in Team Decision Making meetings so that she may conserve her cash resources to secure a new residence." The social worker discovered that in July, the mother had spent $400 on a birthday party for Briana and $500 for a pedigreed dog. The mother also lost her CalWorks cash assistance because she failed to report the child support she received from the father. She stopped returning the social worker's calls and failed to advise the social worker of the location where she and the children were staying.

As of September 29, however, the social worker continued to believe the mother could reunify with the children. "[T]he children are experiencing distress and anxiety relating to their recent changes in housing, and the mother has been the significant daily constant in the lives of the children. The children do not exhibit behavioral concerns in school, and it is the opinion of the undersigned that the mother is managing the children's worries to the best of her ability. Because the mother has consistently provided shelter and has met the basic needs of the children since they were placed in her care for a trial visit, the undersigned recommends continuation of the trial visit so as to allow the mother the opportunity to rectify her financial and residential circumstances . . . ."

On September 18, the social worker discovered the mother had two outstanding warrants. The first was for failure to appear in June 2008 on traffic violations, including driving on a suspended license. The second arose out of the mother's criminal charges for child abuse and endangerment which were issued after the incident leading to the children's detention in December 2007. The criminal court had ordered the mother to enroll in a 52-week parenting class, which she did; but she was later dropped from the class for unexcused absences. Between September 18 and October 29, the social worker repeatedly advised the mother "to resolve the warrants immediately" because the children would be placed at risk of harm if she were arrested. The mother asserted she had talked to law enforcement officers and she was not in danger

of being arrested. At the mother's request, the social worker wrote the mother a "supportive letter" to help her explain to the court why she had missed so many parenting classes. The social worker offered financial help with court fines and bus passes so she could avoid driving on her suspended license, both of which the mother refused. Notwithstanding the mother's repeated promises to take care of the warrants, she never did so.

On October 29, 2008, the mother was arrested and incarcerated. The social worker considered the trial visit to have failed, and she went to the children's school to re-detain them. When she arrived, the maternal grandmother was at the school because she had been told by Andrew's court appointed special advocate (CASA) that the mother had been incarcerated and the children would be re-detained. She came to the school to tell the children what was going to happen. The social worker re-detained the children and placed them at Orangewood.

The father was not able to take the children and was not interested in seeking placement of them in the foreseeable future. After reevaluating the maternal grandmother's home, the social worker placed them there on October 30. On that same day, the mother was released on bail. She was not permitted to live in the same home with the children but was able to visit them there several times a week.

During November and December, the mother's phone worked only sporadically, and she failed to attend appointments with the social worker. She was dropped from her counseling for missing three appointments, and she failed to start the court-ordered domestic violence program. She remained homeless and financially unstable. On December 2, the mother told the social worker she had been diagnosed with uterine cancer and she was too distraught to work. She also said her boyfriend was due to be released from prison in a few days and she planned to move into a residence with him. On December 16, the social worker wrote that the mother had "demonstrate[d] an unwillingness to cooperate with the Court or with the Social Services Agency."

Furthermore, the mother's actions since November 13 "do not reflect that the children [are] a priority in making decisions . . . ."

In her report prepared on December 31 for the 12-month review hearing in January 2009, the social worker stated that the father was no longer interested in reunification. The mother, on the other hand, "feels she has the capacity and the strong desire to reunify with the children." Despite the mother's problems, the social worker recommended six more months of services. By January 16, however, the social worker had changed her recommendation to termination of services for both parents and long term foster care for the children. The maternal grandmother's home had been decertified by SSA because the grandfather had an outstanding arrest warrant. The children were transported to Orangewood by the maternal grandparents on January 7 without their belongings. Later that day, they were placed in a foster home. The social worker then discovered that the father had brought Christmas gifts for the children to the maternal grandparents' home on Christmas morning, but the mother took the gifts and locked them in her storage unit. The social worker asked the mother to bring the gifts, together with the children's clothing and personal items, to a scheduled appointment, but the mother did not. Twice thereafter, the mother promised to bring the items but failed to keep her appointments with the social worker.

The 12-month review hearing was continued to February 9, 2009. On February 4, the social worker reported that the foster family was prepared to monitor visits with the mother, but the mother frequently changed the schedule and failed to confirm her visits in advance, as agreed. The mother also continued to disregard appointments she made with the social worker, which resulted in delays in the completion of the paperwork necessary to enroll her in court-ordered programs and in obtaining a clearance for her boyfriend to have contact with the children. She signed a lease with her boyfriend for $1095 per month, despite the fact that he had not been approved by SSA, and she planned to start a new job on February 1 where "she would be earning $7.50 an

hour plus tips, and . . . she would be working on Friday and Saturday nights from 6:00 p.m. until 2:00 a.m., and all day on Sundays."

After interviewing the children, the social worker determined that the mother had finally given the father's Christmas presents to the girls, but not to Andrew. The mother had told him "he would receive the gift when he moved into his mother's new home." The social worker insisted that the mother give Andrew the gifts, and the mother agreed to do so at her next visit, which was in two days. On February 1, the foster mother called the mother and somehow heard a profane and angry message from the mother's boyfriend to the mother. When confronted, the mother said she and the boyfriend had an argument and he had pushed her away from him. The dispute had since been resolved.

The social worker opined that the mother "continues to make decisions without consideration of the best interests of the children" but continued to recommend long term foster care and monitored visitation "because the children present a strong attachment to each of their parents . . . ."

By February 9, the social worker had changed her recommendation from long term foster care to setting a permanent plan selection hearing. The court continued the case to February 23, but told the mother it was concerned about her repeatedly changing the visitation schedule and failing to give Andrew his Christmas presents from the father, which remained in the storage unit. The mother again said she would give Andrew the present at her next visit, which was in two days.

Two weeks later, the social worker submitted another report. The foster family reported concerns about the mother's behavior. She "calls the foster home multiple times a day every day . . . . [She] calls over and over, again and again, several times in a row." She also "frequently cries while on the phone," which negatively affected the children. Problems with visitation scheduling continued because "the mother does not commit to a regular time for visitation each week, and . . . she fails to call back

and confirm visitation arrangements timely." The social worker discovered, contrary to the previous information, that the mother had not given the Christmas gifts to any of the children. She continued to make promises to bring the gifts and excuses when she did not follow through.

The 12-month review hearing began on Monday, February 23, 2009. When the court discovered that the mother had still not given the children their Christmas gifts, it ordered her to do so by Wednesday, February 25 or face incarceration for contempt of court. The mother did not turn over the gifts as ordered; rather, she failed to show up for court on February 25. Instead, she went to an emergency room and asked a doctor there for a note to excuse her from court. The court received a fax from the emergency room asking that she be excused from work, not court. The mother finally turned over the Christmas gifts to the social worker on Friday, February 27.

The social worker testified she terminated the trial visit in October 2008 because the mother had failed to take care of her warrants and had been incarcerated. The mother had been terminated from individual counseling in mid-November because she had failed to attend three times. The social worker tried to reinstate services, but the mother refused to meet with her during November and December to sign the referral forms. The social worker mailed the forms to the mother, but for some reason she did not receive them. The mother finally signed the forms on January 12. By the time the social worker obtained the signatures of her supervisor and the program manager, however, a hold was placed on all referrals. The children were still not in therapy even though the court ordered SSA to arrange therapy for Andrew on September 29, 2008. The social worker prepared the referral, but the children were with the mother in September and October, and the mother failed to contact the therapy provider for an intake assessment. The children were with the maternal grandmother in November and December, and they also failed to contact the therapy provider. In January, the therapy provider failed to

follow up with the social worker; finally in February, the social worker "initiated a separate route for therapy," and the children were due to start within the next two weeks.

The mother testified she moved in with her boyfriend, who she identified as her fiancé, in mid-December 2008. She met him in 1998, and since that time he had been in and out of prison as many as six times. Although the boyfriend had been arrested for drug-related offenses, the mother said he had been clean since he got out of prison two and one-half months ago. He is a member of the Alley Boys gang. The mother said she "wouldn't want him to be living with my kids yet until he gets help, until he gets his life together, but not right now.

The mother was diagnosed with uterine cancer in mid-November 2008. She had surgery a month later. She did not have to undergo chemotherapy afterwards, but she was treated with antibiotics for an infection. She stated the doctor "told me to take it easy on what I do because it's only been two months, and it's not totally healed. But other than that, he said I'm fine."

The juvenile court found that the mother, notwithstanding her illness, exhibited "a pattern . . . of being resistant in many ways to following either suggestion or direction" and lacked the "ability to follow through." The court observed, "The mother has a lot of problems that she has to work on and one of the first problems that she needs to address is being able to accept responsibility for herself. She cannot, when faced with a problem ignore it and hope it will go away . . . ." The court found the mother could not have the children returned now and there was no substantial probability that they could be returned in the next 13 weeks, which was the time remaining in the 18-month reunification period. Accordingly, the court found that return of the children would create a substantial risk of detriment to their physical and emotional well-being, and that reasonable services had been provided. It terminated reunification services and set a permanent plan selection hearing.

The court ordered that the mother's two hour, twice weekly, monitored visits continue. SSA asked that the mother arrange and pay for a visitation monitor, explaining that the foster family had asked not to serve as monitors because "they feel it's become a conflict" and SSA was using its limited resources for monitors only on reunification cases. The court stated, "I'm not inclined to put that burden on the mother. She has enough going on right now." The court asked SSA if the foster family agency could help with the monitoring. SSA replied: "I will take the information back and work with them to the best of my ability to lean on their responsibility. My argument has been with them, we pay you a lot of money. I don't see a need to pay overtime money [from SSA] when we pay the foster family agency a lot of money, and since we are looking to find a more ideal placement, that will, certainly, be a factor in future placements." The court then ordered: "Social Services to make every effort to provide . . . an objective monitor for mother's visits. The first visit to be monitored by somebody from [SSA], and if after the Agency has exhausted all efforts to obtain a monitor, then mother's going to have to come up with it 'cause that's all we can do."

DISCUSSION

The mother first contends the juvenile court's finding that she was offered reasonable reunification services is not supported by substantial evidence. She claims her services were limited, she had to pay for her own therapy, and the children never received therapy at all. We disagree.

"A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. [Citation.] However, in most cases more services might have been provided and the services provided are often imperfect. [Citation.] 'The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.'

[Citation.]" (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598-599.) We review the juvenile court's finding that reasonable services were offered for substantial evidence. (*Ibid.*)

The mother complains she was able to attend only five weeks of a ten-week domestic violence course because the program was terminated due to funding cuts. But this occurred during the first six months of reunification, and the mother stipulated that she received reasonable reunification services at the six-month review hearing. She has waived that specific complaint. Subsequently, the mother began weekly individual counseling but was terminated after a few months because she failed to attend. The mother only attended for about six weeks, and the therapist did not have "the opportunity to discuss issues relative to domestic violence . . . ." During November and December of 2008, the social worker tried to meet with the mother so services could be reinstated, but the mother did not respond. By the time the paperwork was finally signed in January 2009, all referrals were placed on hold due to the county's financial situation.

The social worker repeatedly directed the mother to CalWorks for homeless assistance, but the mother refused to apply. The mother lost her CalWorks cash assistance because she lied about the support she was receiving from the father, and she spent close to $1000 on nonessential items when she was facing eviction. The social worker created several action plans for the mother, but the mother did not complete the steps. The juvenile court ordered therapy for Andrew in September 2008, and the social worker made the arrangements. But services could not start without the mother, and she failed to contact the service provider. There is substantial evidence in the record to support the conclusion that the mother's failure to reunify with her children was not due to inadequate services; it was because she did not take advantage of the services that were offered. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.)

The mother next contends the juvenile court should have ordered additional reunification services because there was substantial evidence that the children could be

returned to her by the 18-month review hearing. In reviewing the juvenile court's order, however, we do not determine whether substantial evidence supports a different result. Rather, we review the record to determine whether there is substantial evidence to support the order that the court made. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

At the 12-month review hearing, the juvenile court can order further reunification services only if it finds "there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home" by the date which is 18 months from child's removal from parental custody. (§ 366.21, subd. (g)(1).) In order to make this finding, the court must also find that the parent has: (1) "consistently and regularly contacted and visited with the child"; (2) "made significant progress in resolving problems that led to the child's removal from the home"; and (3) "demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1)(A)-(C).)

There is substantial evidence it was unlikely the children would be returned to the mother by the end of the 18-month reunification period, which was three months from the date of the 12-month orders. She had made living arrangements that could not include the children, she had not demonstrated financial stability, and she had failed to act consistently and reliably in dealing with her children. The juvenile court was especially concerned about the constant changes in the mother's visitation schedule and the emotional insensitivity displayed by the mother over her children's Christmas gifts.

The mother's final contention is that the juvenile court erred in ordering her to pay for a visitation monitor as a condition to visiting her children. Her argument is disingenuous.

The mother has made no showing that SSA has been unable to find a monitor; thus, her challenge to the order is not ripe. Furthermore, the court did not order the mother to pay for a monitor, just "come up" with one if SSA exhausted all its

resources without being successful. We need not decide whether the mother can be required to pay for a visitation monitor until the situation presents itself. Otherwise, we would be issuing an "opinion advising what the law would be upon a hypothetical state of facts." (*Otay Land Co. v. Royal Indemnity Co.* (2008) 169 Cal.App.4th 556, 562, internal citations omitted.)

DISPOSITION

The juvenile court's orders terminating reunification services and setting a permanent plan selection hearing are correct. Accordingly, we deny the petition for relief.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

O'LEARY, J.